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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
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9 Raymond Smith,

10 Petitioner,

11 vs.

12  
13 Craig Apker,

14 Respondent.  
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No. CV-11-328-TUC-FRZ (BPV)

**ORDER**

16 Before the Court for consideration is the Petition for Writ of Habeas Corpus pursuant to 28  
17 U.S.C. § 2241 filed by Petitioner Raymond Smith, *pro se*, and the Report and Recommendation of  
18 the Magistrate Judge, who has recommended dismissal.

19 The Petitioner was found to have committed the prohibited act of possession of narcotics  
20 paraphernalia, in violation of Federal Bureau of Prisons Program Statement 5270.08 Code 113. The  
21 DHO sanctioned Petitioner to a loss of 40 days good conduct time, 60 days of disciplinary  
22 segregation, 1 year loss of visits, 6 months immediate family only visits, and recommended a  
23 disciplinary transfer.

24 The Petition for Writ of Habeas Corpus lists two grounds for relief: Ground One “U.D.C.  
25 staff violated the rights of [P]etitioner in not securing a confidential hearing for the U.D.C.,” Ground  
26 Two “the 24-hour notice requirement was disregarded because the petitioner never received notice  
27 of appearance prior to the D.H.O. hearing.”

28 The Petitioner also raised a new ground for relief in his reply to the Respondent “that either  
the failure of the D.H.O. to allow the requested staff witnesses to testify, instead of submitting

1 written statements, or the failure of his requested staff representative to represent him instead of  
2 Case Manager Hammoude, would have cast doubt about his actual guilt in this instance, or would  
3 have assisted him in bringing the due process issue to the forefront in a way that he could not.”

4 This matter was referred to Magistrate Judge Bernardo P. Velasco, pursuant to the provisions  
5 of 28 U.S.C. § 636(b), Rule 72, Fed.R.Civ.P., and Local Rules 72.1 and 72.2 of the Rules of Practice  
6 of the United States District Court for the District of Arizona, for further proceedings and Report  
7 and Recommendation.

8 Magistrate Judge Velasco issued his Report and Recommendation, recommending the Court  
9 deny the Petition of Habeas Corpus. This recommendation is based on that the finding that: Ground  
10 One “fails as a matter of fact and a matter of law;” Ground Two “fails to raise a due process claim.”

11 The Magistrate Judge further recommends that the new claim raised in the Petitioner’s reply  
12 to the response be denied as “the Petitioner’s claims that he was deprived of due process are without  
13 merit and fail to provide a basis for relief.”

14 The Report and Recommendation issued by Magistrate Velasco sets forth the factual and  
15 procedural history of the Petitioner’s Bureau of Prison disciplinary proceedings, sanctioning, and  
16 subsequent appeals at issue, as well as provides a thorough analysis of the claims and legal standards  
17 at issue.

18 The Petitioner filed an Objection to the Report and Recommendation that was issued by  
19 Magistrate judge Velasco pursuant to 28 U.S.C. § 636(b), challenging the substantive and procedural  
20 findings set forth therein.

21 This Court finds, after consideration of all the matters presented and an independent review  
22 of the record which included the Objection to the Report and Recommendation by the Petitioner,  
23 that the Petition for Writ of Habeas Corpus be denied and this action be dismissed in accordance  
24 with the Report and Recommendation set forth therein.

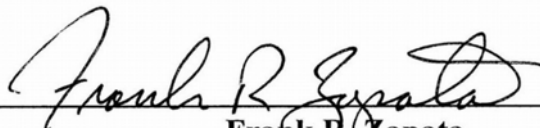
25 **IT IS HEREBY ORDERED** that Magistrate Judge Velasco’s Report and Recommendation  
26 [Doc. 14] is hereby ACCEPTED AND ADOPTED as the findings of fact and conclusions of law  
27 by this Court;

28 **IT IS FURTHER ORDERED** that the Petition for Writ of Habeas Corpus is DENIED and

1 this action is hereby DISMISSED;

2 **IT IS FURTHER ORDERED** that judgment be entered accordingly.

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4 DATED this 18<sup>th</sup> day of April, 2014.

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7 **Frank R. Zapata**  
8 **Senior United States District Judge**  
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